



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 14, 2003

Lieutenant Wyman Hopkins
Support Services
Rosenberg Police Department
2120 Fourth Street
Rosenberg, Texas 77471

OR2003-7314

Dear Lieutenant Hopkins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189276.

The Rosenberg Police Department (the "department") received a request for seventeen specified offense reports. You state that some of the requested information has been furnished to the requestor. You claim, however, that portions of the requested information are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code, which provides in part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile conduct involving a juvenile 10 years of age or older and under 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Offense report number 03-23077 pertains to an alleged offense by a juvenile suspect. It does not appear that any of the exceptions in section 58.007 apply. Accordingly, we determine that the department must withhold the offense report number 03-23077 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Next, you contend that portions of offense report number 03-22773 are protected by common-law privacy. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. Furthermore, this office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Upon review of offense report number 03-22773, we agree that the offense report contains information that is protected by common-law privacy. We have marked the information in offense report number 03-22773 that the department must withhold under section 552.101 in conjunction with common-law privacy.

We next address your claim under section 552.108 of the Government Code with respect to the remaining submitted information. You indicate that the narrative portions of the remaining submitted offense reports are excepted under section 552.108.¹

¹We note that you do not raise section 552.108 as an exception to disclosure for offense report number 03-22773. Thus, the present ruling addresses the applicability of section 552.108 to offense report numbers 03-23288, 03-23241, 03-23226, 03-23099, 03-22898, 03-22877, 03-22862, 03-22776, and 03-22765.

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate that the remaining submitted offense reports relate to pending criminal investigations. Based on your representations and our review, we agree that release of the narrative portions of the remaining submitted offense reports would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, we generally agree that this information is excepted from disclosure under section 552.108(a)(1).

We note, however, that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. *See* Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*. *See Houston Chronicle*, 531 S.W.2d 177; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Basic information includes a detailed description of the offense. *See Houston Chronicle*, 531 S.W.2d at 180, 187-88; Open Records Decision No. 127 (1976); *see also* Gov’t Code § 552.130. With the exception of basic information, including a detailed description of the offense, the department may withhold the narrative portions of the remaining submitted offense reports, which we have marked, pursuant to section 552.108(a)(1) of the Government Code.

We note that the portions of offense report numbers 03-23288, 03-23241, 03-23226, 03-22877, 03-22862, 03-22776, and 03-22765 that you do not seek to withhold under section 552.108 contain Texas driver’s license and license plate numbers that are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts information relating to a Texas motor vehicle driver’s license, and information relating to a Texas motor vehicle title or registration. Gov’t Code § 552.130. The department must withhold the Texas driver’s license and license plate numbers we have marked under section 552.130 of the Government Code.

Finally, the portions of offense report numbers 03-23288, 03-23241, 03-23226, 03-22877, 03-22862, 03-22776, and 03-22765 that you do not seek to withhold under section 552.108 also contain social security numbers. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state

pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security numbers in offense report numbers 03-23288, 03-23241, 03-23226, 03-22877, 03-22862, 03-22776, and 03-22765 are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the department must withhold offense report number 03-23077 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. We have marked the portions of offense report number 03-22773 that the department must withhold pursuant to section 552.101 in conjunction with common-law privacy. The department must release the remainder of offense report number 03-22773 to the requestor. With the exception of basic information, which must be released, the department may withhold the narrative portions of the remaining submitted offense reports, which we have marked, under section 552.108(a)(1) of the Government Code. The department must withhold the marked driver's license and license plate numbers under section 552.130 of the Government Code. Social security numbers may be excepted under section 552.101 in conjunction with federal law. The remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 189276

Enc: Submitted documents

c: Mr. Anthony Payne
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(w/o enclosures)